

E 99
. S3 B39

No. 2



No. 666.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE PEOPLE OF THE STATE OF NEW YORK ON THE
RELATION OF WALTER S. KENNEDY, AS NEXT
FRIEND OF FAYETTE KENNEDY, WARREN KEN-
NEDY, AND WILLIS WHITE, JR., PLAINTIFFS IN
ERROR,

v.

FREDERICK W. BECKER, AS SHERIFF OF ERIE COUNTY,
NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

MOTION TO ADVANCE.

E 99

S 3 B 39

no. 2

D. of D.

APR 29 1916

July 10, 1916.
(2)

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE PEOPLE OF THE STATE OF NEW YORK
on the relation of Walter S. Kennedy, as
next friend of Fayette Kennedy, Warren
Kennedy, and Willis White, jr., plain-
tiffs in error,

No. 666.

v.

FREDERICK W. BECKER, AS SHERIFF OF
Erie County, New York.

*IN ERROR TO THE SUPREME COURT OF THE STATE OF
NEW YORK.*

MOTION TO ADVANCE.

The plaintiffs in error, appearing by George P. Decker, Esq., the attorney for the relator above named, as also by the Solicitor General, acting on behalf of said relator and of the United States, move the court to advance this cause for hearing on a day convenient to the court during the present term.

This proceeding originated with a petition filed by the relator in the Supreme Court of New York at a special term in Erie County for a writ of habeas corpus to inquire into the cause of the detention by

the sheriff of that county of three tribal Indians of the Seneca Nation. These Indians were under arrest for alleged violation of the fish and game laws of the State by taking fish with spears, for use as food, on lands ceded by the Seneca Nation to Robert Morris in 1797. The cession referred to was made at a public treaty in the presence of a commissioner representing the President, and the treaty was ratified by the Senate on March 11, 1798. The treaty contained the following clause:

Excepting and reserving to them, the said parties of the first part and their heirs, the privilege of fishing and hunting on the tract of land hereby intended to be conveyed.

It is claimed in behalf of the prisoners that this provision of the treaty secured to the Seneca Indians a perpetual right of fishing and hunting on the ceded land, in accordance with the ancient customs and practices of the tribe, free from any limitations or restrictions by the fish and game laws of the State. This claim was denied by the decision below, and the prisoners remanded to the custody of the sheriff.

Large areas in New York are affected by similar treaty reservations in favor of other Indians of the Six Nations. These Indians, many of whom are unable to speak English and have little knowledge of the game laws of the State of New York, have always been accustomed to hunt and fish upon these lands, and believe and insist that the privilege was secured to them by the treaties. Since this case arose many have been arrested, convicted, and punished in the

State courts for violation of the game laws, and new prosecutions of the same kind are being commenced from time to time by officials of the State. The residence reservations of the Indians are invaded for the purpose of taking them in custody. These conditions are likely to continue as long as the question remains in doubt; that is, as long as it remains a question undecided by this court.

Opposing counsel concur in the motion to advance.

JOHN W. DAVIS,
Solicitor General.

JANUARY, 1916.







